IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 969 of 2002

RAGHUVEERSINGH TOMAR
V/S
KARNAL SHER SINGH

Mr. RK THANVI, for the appellant / petitioner

None present for the respondent

Date of Order : 2.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this revision, the petitioner seeks to challenge the order of the learned trial court dt. 29.7.2002. By the said order, the learned trial court has dismissed the petitioner's application filed under O. 37 Rule 4 C.P.C. read with Section 151 C.P.C.

The facts of the case are, that a summary suit was filed against the petitioner on 13.5.1999, for recovery of a sum of Rupees One Lakh, on the basis of the cheque, said to have been given by the petitioner on 10.10.1998, which was dishonored. After instituting the suit summons for appearance were sent to the petitioner, which were duly served, and appearance was put in. Thereafter summons for judgment were issued by registered post, which were some times received unserved, and sometimes not received, and ultimately vide order dt. 16.5.2000 fresh notice was

ordered to be issued, accordingly notices were issued again, and were sent by registered post. Then, on the next date of hearing, being 5.9.2000, it was found, that the A.D. was received, and on that basis it was found, that service was sufficient, and on that day the counsel then appearing for the petitioner pleaded no instruction, then ultimately on 20.10.2000 the suit was decreed. It is thereafter, that application under O. 37 Rule 4 was filed by the petitioner on 16.11.2000, contending interalia, that summons for judgment was received unserved, then fresh summons were issued, then in para-3 it was pleaded, that the service was presumed on the ground that more than one month has expired since sending of the summons by registered post, and the acknowledgment card, which has been received does not bear signature of the defendant, therefore, it is a question as to whether presumption should be drawn or not. Then it is contended, that the defendant learnt about the decree from his counsel vide letter dt. 31.10.2000, and therefore, the application is being filed. A reply to this application was filed on behalf of the plaintiff, interalia contending, that the present petitioner was regularly keeping vigil over the litigation, and ultimately no instructions were pleaded, and that from the acknowledgment receipt it is clear, that summons were served upon the defendant, and service was rightly presumed.

The learned trial court found from perusal of the record, that summon was sent on the address given by him, and counsel was regularly appearing on behalf of the appellant. In such circumstances, relying on the basis of the postal receipt, and acknowledgment card receipt, the service was taken to be sufficient, and it cannot be said to be on account of any error, simply because A.D. card does not bear any signature, and it cannot furnish any ground to defendant to contest.

I have gone through the impugned order, and perused the original record, and from perusal thereof, at page A-16/1, it transpires that registered A.D. was booked from Nagori Gate, Jodhpur on 26.7.2000, and then it also bears the postal round black stamp of the post office. Then, at page no. C-17/2 is the postal receipt, bearing no. 0936, about booking of that registry. There is nothing to show, that it was a manipulation on the side of the plaintiff, in simply getting the registry of summon booked by the post office, and not getting it served, and to manipulate the things. In absence of any such averment, the presumption of regularity of the official act is required to be taken.

In that view of the matter, if the learned trial court took the service of the petitioner to be sufficient, it cannot be said, that there is any error on the part of

the learned trial court. It is also significant to note, that this order-sheet was drawn in the presence of counsel, who was already representing the defendant. Of course he chose to plead no instruction, but then as appears from the averments of the application, that it was the same counsel, who of his own, sent intimation to the defendant about the suit having been decreed, and that communication is alleged to have been received by the defendant, in ordinary course of things, even the learned counsel could sent intimation to the defendant about the order dt. 5.9.2000, so as to enable him to take requisite steps in time, as the letter dt. 31.10.2000 said to have been sent by the learned counsel, is alleged to have been received on 3.11.2000. Then, on equitable consideration also I do not find any error in the impugned order, requiring any interference in my revisional jurisdiction.

The revision thus has no force, and is dismissed.

(N P GUPTA),J.

/Sushil/